

## **9 FAM 41.61 Notes**

(TL:VISA-268; 04-26-2001)

### **9 FAM 41.61 N1 Applying INA 214(I)**

#### **9 FAM 41.61 N1.1 Public Primary School or a Publicly-funded Adult Education Program**

(TL:VISA-268; 04-26-2001)

a. Congress imposed limitations on aliens' attendance in publicly funded institutions in the 1996 immigration legislation. As of November 30, 1996, F-1 visas cannot be issued to persons seeking to enter the United States in order to attend a public primary school or a publicly funded adult education program. (See INA 214(I).) This does not, however, bar a dependent of a nonimmigrant in any classification, including F-1, from attendance at a public primary school, an adult education program, or another public educational institution, as appropriate. *For the purpose of INA 214(I), primary school means kindergarten through 8th grade.*

#### **9 FAM 41.61 N1.2 Secondary School**

(TL:VISA-268; 04-26-2001)

*INA 214(I) restricts, but does not prohibit, the issuance of F-1 visas to students seeking to attend public high schools. Secondary school is deemed to be grades 9-12. As of November 30, 1996, two new additional criteria were imposed on intending F-1 students at public high schools:*

*(1) They cannot attend such school for more than 12 months; and*

*(2) They must repay the school system for the full, unsubsidized, per capita cost of providing the education to him or her.*

#### **9 FAM 41.61 N1.2-1 Twelve Month Attendance Limit**

(TL:VISA-268; 04-26-2001)

a. *Posts cannot issue an F-1 visa if the length of study indicated on the I-20 exceeds the 12-month cumulative period permitted under INA 214(I). F-1 visas issued to attend public secondary schools should be limited to 12 months.*

*b. It is important to remember that, public secondary attendance in a status other than F-1 (including unlawful status), does not count against the 12-month limit. Nor does attendance in F-1 status prior to November 30, 1996. However, if an alien obtained an extension of status or departed the U.S. and was readmitted in F-1 status after November 30, 1996, the alien would be required to comply with INA 214(l) and the one-year limit would begin to run from the date of the extension or the date of readmission in F-1 status.*

*c. The 12-month limitations applies to students who entered or transferred to public schools on or after November 30, 1996. Those already in public schools prior to that date and remaining in that status may continue without a break until completion of their courses. A break in the schooling brings INA 214(l) into effect.*

#### **9 FAM 41.61 N1.2-2 Reimbursement**

*(TL:VISA-268; 04-26-2001)*

*A public school system issuing a Form I-20 AB for attendance at a secondary school must indicate on the I-20 that such payment has been made and the amount of such payment. School districts may not waive or otherwise ignore this requirement. If the Form I-20 does not include the requisite information, the student must have a notarized statement stating the payment has been made, and the amount, from the designated school official (DSO) who signed the Form I-20. If not, the visa must be refused, under INA 221(g), until the applicant provides the necessary documentation.*

*b. Although the per capita costs vary from one school district to another (and sometimes from one school to another within the same district), the averages across the country have ranged from about \$3400 to more than \$10,000. They run somewhat less than that in Puerto Rico and U.S. territories. These figures are guidelines only, and should not be taken as absolutes. If, however, a Form I-20 indicates a repaid cost radically different (for example, something less than \$2,000), the consular officer should make further inquiries of the school district before determining whether or not this is acceptable. If a request for additional information does not resolve the matter, consular officers may refer the matter to the Department (CA/VO/F/P and CA/VO/L/A).*

### **N1.2-3 Aliens Under Legal Guardianship of American Citizen Relatives**

(TL:VISA-268; 04-26-2001)

*Schools sometimes advise relatives to declare themselves as the alien's legal guardian. The school then admits the foreign student as a resident, wrongfully assuming that this would exempt the alien from the INA 214(l) requirements. The student's status as a resident of the school district is irrelevant. Likewise, the fact that the student's U.S. sponsor has paid local property/school taxes does not fulfill the reimbursement requirement of 214(l).*

### **N1.3 Student Visa Abusers**

(TL:VISA-268; 04-26-2001)

*INA 212(a)(6)(G) provides sanctions against foreign students who fail to comply with the INA 214(l) requirements. An alien in F-1 status who violates the 214(l) provisions is excludable until he or she has been outside the United States for a continuous period of five years after the date of the violation. (See also 40.67 Notes). Consular officers should note that aliens who are not subject to INA 214(l) are not subject to INA 212(a)(6)(G).*

## **9 FAM 41.61 N2 “CIPRIS”**

### **9 FAM 41.61 N2.1 Origin of CIPRIS**

(TL:VISA-206; 05-22-2000)

In response to a requirement in the Illegal Immigration Reform and Immigrant Responsibility Act, in 1997 the U.S. Immigration and Naturalization Service (INS) initiated a pilot program to monitor the academic progress, movement, etc. of foreign students and exchange visitors from entry into the United States to departure. It is known as CIPRIS, the acronym for Coordinated Interagency Partnership Regulating International Students. The program generates I-20s and IAP 66s (bearing indicia I-20P and IAP-66P) which will be bar-coded to identify the various activities of the student from arrival at school, through changes in program or authorized employment due to changed circumstances, transfer to another school, etc. When fully implemented (by January 1, 2003), all posts (as well as the INS) will be able to retrieve through the internet the current status of any student. Schools participating in the pilot program will continue to do so after the official end of the pilot program, which will then be designated “operational prototype.”

## **9 FAM 41.61 N2.2 Current Status of the Program**

*(TL:VISA-206; 05-22-2000)*

The schools participating in the pilot program are listed in 9 FAM 41.61 Exhibit II. The Form I-20Ps from those schools, which are blue, are currently sent to the student and a copy is transmitted electronically to INS. Eventually, the posts will receive the forms electronically, since the goal is to eliminate paper I-20's entirely. The I-20Ps are used in lieu of both I-20 A-B and I-20 M-N. Separate I-20Ps are provided for each dependent, even if the dependent(s) is/are accompanying the student. Ultimately, under this program, full-term students (and their dependents) will be issued secure identity cards that can be used to re-enter the United States in lieu of an endorsed I-20.

## **9FAM 41.61 N2.3 CIPRIS Direct**

*(TL:VISA-206; 05-22-2000)*

CIPRIS direct permits posts to use a touch-tone telephone to access current information about CIPRIS students. Calls should be made to (202) 633-1106. The system will ask for the site type, which is number 3, the post 3 letter code used on CLASS hits, and the student's "N" number (given in section 1 of the I-20P or right-hand corner of IAP-66P). After entering these data the caller should press the pound-sign key. The system will respond with instructions for getting either a voice or fax reply.

## **9 FAM 41.61 N3 Evidence of Acceptance by an Approved Institution of Education or Training**

### **9 FAM 41.61 N3.1 Form I-20 A-B or Form I-20 M-N, Certificates of Eligibility**

*(TL:VISA-206; 05-22-2000)*

An F-1 or M-1 visa may be issued only to an applicant who presents a properly completed and valid Form I-20 A-B/I-20 ID or Form I-20 M-N/I-20 ID or I-20P from the institution the student will attend. These forms are issued only in the United States by approved institutions to students who will pursue a full course of study. INS has authorized schools to reproduce the forms locally. Consular officers should be aware, therefore, that the appearance of the forms might vary somewhat. Care must be taken, however, to see that locally reproduced forms are textually identical to the standard forms. As noted in 9 FAM 41.61 N2, the I-20Ps are blue and issued only by schools participating in the CIPRIS program. The I-20P also differs in Item 4 by containing only the selected program, not the menu of choices on the standard form.

## **9 FAM 41.61 N3.2 Execution of Certificate of Eligibility**

(TL:VISA-206; 05-22-2000)

A certificate of eligibility must bear the original signature of a designated school official (DSO) certifying that:

- (1) The student's application for admission has been fully reviewed and is approved;
- (2) The student is financially able to pursue the proposed course of study;
- (3) Page 1 of the Form I-20 was completed and verified to be accurate prior to signature; and
- (4) If the student will be attending a public high school, the school indicates that the student has paid the unsubsidized cost of the education (see INA 214(l)) and the amount submitted by the student for that purpose.

## **9 FAM 41.61 N3.3 Action in Cases Where Form I-20 Information Is Missing**

(TL:VISA-206; 05-22-2000)

If the applicant submits a Form I-20 that does not contain all the required information, the consular officer must suspend action and require that the missing information be submitted.

## **9 FAM 41.61 N3.4 Suspension of Cases Involving Unrealizable Reporting Dates**

(TL:VISA-206; 05-22-2000)

If a reporting date specified in the applicant's Form I-20 is already past, or the consular officer believes that the applicant will be unable to meet the reporting date, action on the application must be suspended. (As a reporting date is not required, some Forms I-20 do not contain an arrival date.) The consular officer must tell the applicant that further action cannot be taken until an amended Form I-20 is presented with a feasible reporting date. Alternatively, the school may provide a letter stating that the student will be enrolled even though the date specified in the original Form I-20 has not been or cannot be met.

## **9 FAM 41.61 N3.5 Notation on Form I-20 A-B or Form I-20 M-N by Superintendent of a School System**

*(TL:VISA-206; 05-22-2000)*

Forms I-20 issued by a school system must indicate the school within the system the student will attend.

## **9 FAM 41.61 N3.6 Form I-20 ID**

*(TL:VISA-206; 05-22-2000)*

a. At the time of admission to the United States, a student must present the entire Form I-20 (A-B) or (M-N)/I-20 ID properly and completely filled out and signed by the designated school official (DSO) and the student. Thus, after an F-1 or M-1 visa has been issued, the consular officer must return the complete Form I-20, together with all supporting financial evidence, to the alien for presentation to the U.S. Immigration officer at the port of entry. Upon the alien's arrival, the immigration officer will examine the documentation and return the financial evidence to the alien.

b. If the student is admitted, INS will retain Form I-20A or Form I-20M, send Form I-20B or Form I-20N to the school as notice of the student's admission to the United States, and return the I-20 ID to the student endorsed with an admission number. The student must safeguard the form at all times. If the student loses it, he or she must obtain a replacement copy from the designated school official.

c. The I-20P is in single copy only as all records relating to the student after admission will be electronically generated and stored.

## **9 FAM 41.61 N3.7 Inquiries to the Department or INS Concerning the Status of a Form I-20**

*(TL:VISA-206; 05-22-2000)*

As a rule, posts should not request the Department or INS to ask educational institutions whether a particular alien has been accepted or whether they have sent the required form to the applicant. Consular officers normally should avoid putting themselves or the Department in a position of interceding in this matter and should advise the applicant to communicate directly with the school. Cases involving special public relations or bilateral problems, however, may be submitted to the Department (CA/VO/F/P) by telegram (TAGS: CVIS). Justification for the action requested must be included in the message.

## **9 FAM 41.61 N4 Residence Abroad**

### **9 FAM 41.61 N4.1 Residence Abroad Required**

*(TL:VISA-206; 05-22-2000)*

The consular officer may not issue a student visa unless satisfied that the applicant:

- (1) Has a residence abroad;
- (2) Has no intention of abandoning that residence; and
- (3) Intends to depart from the United States upon completion of the course of study.

### **9 FAM 41.61 N4.2 Evidence of Residence Abroad**

*(TL:VISA-6; 11-23-1987)*

Applicants generally establish their ties abroad by presenting evidence of economic, social, and/or family ties in their homeland sufficient to induce them to leave the United States upon the completion of studies. [See 9 FAM 41.11 N2.]

### **9 FAM 41.61 N4.3 Relationship of Education or Training Sought to Existence of Ties Abroad**

*(TL:VISA-6; 11-23-1987)*

The fact that a student's proposed education or training would not appear to be useful in the homeland is not, in itself, a basis for refusing an F-1 or M-1 visa. It may, however, be a relevant factor in the overall assessment of the likelihood of the alien's return. This may be particularly true where F-1 coursework is advanced far beyond local needs or in certain M-1 cases. If an M-1 student wants to pursue a vocation that does not (and for the likely future will not) exist in the homeland, the prospect of his or her voluntary departure from the United States is diminished unless the applicant can show the intention to work elsewhere abroad following the training.

### **9 FAM 41.61 N4.4 Availability of Collateral Academic Education in the Applicant's Homeland**

*(TL:VISA-6; 11-23-1987)*

The fact that education or training similar to that which the applicant plans to undertake is apparently available in the home country is not in itself a basis for refusing a student visa. An applicant may legitimately seek to

study in the United States for various reasons, including a higher standard of education or training. Furthermore, the desired education or training in the applicant's homeland may be only theoretically available; openings in local schools and institutions may be already filled or reserved for others.

## **9 FAM 41.61 N5 Knowledge of English**

### **9 FAM 41.61 N5.1 Notation on Form I-20**

*(TL:VISA-6; 11-23-1987)*

If the alien's Form I-20 indicates that proficiency in English is required for pursuing the selected course of study and that no arrangements have been made to overcome any English-language deficiency, the consular officer must determine whether the alien has the necessary proficiency. To this end, the officer must conduct the visa interview in English and may require the applicant to read aloud from an English-language book, periodical, or newspaper, and to restate in English in the applicant's own words what was read. The applicant may also be asked to read aloud and explain several of the conditions set forth in the Form I-20.

### **9 FAM 41.61 N5.2 Language Tests Given by Academic and Nonacademic Institutions**

*(TL:VISA-206; 05-22-2000)*

In the event that the applicant's language proficiency appears marginal, the consular officer may refer the applicant for language testing. Tests for this purpose will ordinarily be carried out by appropriate local groups, such as qualified host-country facilities. If the latter are used, the consular officer should be satisfied that the testing standards are sufficiently strict. However, if the local situation requires the consular officer to determine the language proficiency of applicants, materials such as the Test of English Language Proficiency (TELP) may be available at the post. If not, they may be requested from the Department, through the post's public affairs officer.

### **9 FAM 41.61 N5.3 Courses for Students Taught in a Language Other Than English in which the Student Is Proficient**

*(TL:VISA-6; 11-23-1987)*

Proficiency in English is not required of a student if the enrolling institution conducts the course in a language in which the alien is proficient.

## **9 FAM 41.61 N6 Adequate Financial Resources**

### **9 FAM 41.61 N6.1 Determining Financial Status of F-1 and M-1 Students**

#### **9 FAM 41.61 N6.1-1 F-1 Student**

*(TL:VISA-206; 05-22-2000)*

The phrase "sufficient funds to cover expenses" referred to in 22 CFR 41.61(b)(ii) means the applicant must establish the unlikelihood of either becoming a public charge as defined in INA 212(a)(4) or of resorting to unauthorized U.S. employment for financial support. An applicant must provide documentary evidence that sufficient funds are, or will be, available to defray all expenses during the entire period of anticipated study. This does not mean that the applicant must have cash immediately available to cover the entire period of intended study, which may last several years. The consular officer must, however, require credible documentary evidence that the applicant has enough readily available funds to meet all expenses for the first year of study. The officer also must be satisfied that, barring unforeseen circumstances, adequate funds will be available for each subsequent year of study from the same source or from one or more other specifically identified and reliable financial sources.

#### **9 FAM 41.61 N6.1-2 M-1 Student**

*(TL:VISA-6; 11-23-1987)*

All applicants for M-1 visas must present evidence that they have immediately available to them funds or assurances of support necessary to pay all tuition and living costs for the entire period of intended stay. Additionally, consular officers are authorized, at their discretion, to require evidence of payment of round trip transportation in advance of the alien's travel to the United States.

### **9 FAM 41.61 N6.2 Funds From Source(s) Outside the United States**

*(TL:VISA-6; 11-23-1987)*

Whenever an applicant indicates financial support from a source outside the United States (for example, from parents living in the country of origin), the consular officer must determine whether there are restrictions on the transfer of funds from the country concerned. If so, the consular officer must require acceptable evidence that these restrictions will not prevent the funds from being made available during the period of the applicant's projected stay in the United States.

## **9 FAM 41.61 N6.3 Affidavits of Support or Other Assurances by an Interested Party**

*(TL:VISA-6; 11-23-1987)*

Various factors are important in evaluating assurances of financial support by interested parties:

(1) Financial support to a student is not a mere formality to facilitate the applicant's entry into the United States, nor does it pertain only when the alien cannot otherwise provide adequate personal support. Rather, the sponsor must ensure that the applicant will not become a public charge or be compelled to take unauthorized employment while studying in the United States. This obligation commences when the alien enters the United States and continues until the alien's departure;

(2) The consular officer must require documentary evidence to resolve any doubt that the financial status of the person giving the assurance is sufficient to substantiate the assertion that financial support is available to the applicant;

(3) If the person giving the assurance is in the United States in nonimmigrant status, the consular officer must examine the evidence presented with exceptional care. Is the sponsor's financial situation sufficient to provide the funds without need to resort to unauthorized employment? Is it likely to worsen during the period of the commitment, possibly compelling the applicant or the sponsor to resort to unauthorized employment? Will the nonimmigrant sponsor remain in the United States at least as long as the student?;

(4) The consular officer must also carefully evaluate the factors which would motivate a sponsor to honor a commitment of financial support. If the sponsor is a close relative of the applicant, there may be a greater probability that the commitment will be honored than if the sponsor is not a relative. Regardless of the relationship, the consular officer must be satisfied that the reasons prompting the offer of financial support make it likely the commitment will be fulfilled.

## **9 FAM 41.61 N6.4 Funds from Fellowships and Scholarships for F-1 Student**

*(TL:VISA-6; 11-23-1987)*

A college or university may arrange for a nonimmigrant student to engage in research projects, give lectures, or perform other academic functions as part of a fellowship, scholarship or assistantship grant, provided the institution certifies that the student will also pursue a full course of study.

## **9 FAM 41.61 N6.5 Post-Doctoral Research Grants for F-1 Student**

*(TL:VISA-6; 11-23-1987)*

An alien may be documented as an F-1 student for post-doctoral research even if the college or university provides compensation to the alien in the form of a grant.

## **9 FAM 41.61 N7 Educational Qualifications for F-1 and M-1 Students**

*(TL:VISA-206; 05-22-2000)*

Consular officers are not expected to assume the role of guidance counselor to determine whether an applicant for an F-1 or M-1 visa is qualified to pursue the desired course of study. The institution will satisfy itself on the student's abilities before accepting the applicant for enrollment. Consular officers should, however, be alert to three specific factors in this regard:

(1) The applicant has successfully completed a course of study equivalent to that normally required of a U.S. student seeking enrollment at the same level;

(2) Cases in which an applicant has submitted forged or altered transcripts of previous or related study or training which the institution has accepted as valid; and

(3) Cases in which an institution has accepted an applicant's alleged previous course of study or training as the equivalent of its normal requirements when, in fact, such is not the case. [See 9 FAM 41.61 N8.1 and 9 FAM 41.62 N8.2.]

## **9 FAM 41.61 N8 Fraud, Related to Certificates of Eligibility**

### **9 FAM 41.61 N8.1 Certificates of Eligibility Obtained Through Misrepresentation**

*(TL:VISA-206; 05-22-2000)*

Fraud, as it relates to F-1 and M-1 cases, often involves the submission of false records to institutions to secure a Certificate of Eligibility. If this type of fraud is suspected, the consular officer must suspend action on the application and request the issuing school to conduct a full review of the student's records to ensure that all documentation and information are correct. The institution should be contacted only when the officer has knowledge that the documentation is fraudulent or contains misrepresentations which may have misled the school to issue the

certificate. The officer must give the specific reasons why a review of the student's application is appropriate, and request the school to report its findings once the review has been concluded. Should the report confirm fraud or misrepresentation of a material fact on the part of the applicant, the officer must consider the applicability of ineligibility under INA 212(a)(6)(C). [Questions concerning an alien's ineligibility under INA 212(a)(6)(C) must be addressed to the Advisory Opinions Division of the Visa Office (CA/VO/L/A).]

## **9 FAM 41.61 N8.2 Irregularities and Unusual Patterns of Issuance of Certificates of Eligibility/Counterfeit Forms**

(TL:VISA-6; 11-23-1987)

Consular officers must inform the appropriate INS district office and CA's Office of Fraud Prevention Programs (CA/FPP) of any case or cases in which there are perceptible irregularities or unusual patterns in the issuance of Forms I-20 by an institution, or where it is suspected that an applicant has a counterfeit form.

## **9 FAM 41.61 N9 Full Course of Study**

### **9 FAM 41.61 N9.1 F-1 Academic Student**

#### **9 FAM 41.61 N9.1-1 General**

(TL:VISA-206; 05-22-2000)

INS regulations (8 CFR 214.2(f)(6)(i)) specify that "Successful completion of the full course of study must lead to the attainment of a specific educational or professional objective." A 'full course of study' as required by section 101(a)(15)(F)(i) of the Act means:

a. Postgraduate study or postdoctoral study at a college or university, or undergraduate or postgraduate study at a conservatory or religious seminary, certified by a DSO as a full course of study;

b. Undergraduate study at a college or university, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter hour systems, where all undergraduate students who are enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or are considered full-time for other administrative purposes, or its equivalent (as determined by the district director in the school approval process), except when the student needs a lesser course load to complete the course of study during the current term;

c. Study in a postsecondary language, liberal arts, fine arts, or other nonvocational program at a school which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning which are either:

(1) A school (or school system) owned and operated as a public educational institution by the United States or a State or political subdivision thereof; or

(2) A school accredited by a nationally recognized accrediting body; and which has been certified by a designated school official to consist of at least twelve clock hours of instruction a week, or its equivalent as determined by the district director in the school approval process;

d. Study in any other language, liberal arts, fine arts, or other nonvocational training program, certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or to consist of at least twenty-two clock hours a week if the dominant part of the course of study consists of laboratory work; or

e. Study in a primary school or academic high school curriculum certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation;

f. Notwithstanding paragraphs (f)(6)(i)(A) and (f)(6)(i)(B) of this section, an alien who has been granted employment authorization pursuant to the terms of a document issued by the Commissioner under paragraphs (f)(9)(i) or (f)(9)(ii) of this section and published in the Federal Register shall be deemed to be engaged in a "full course of study" if he or she remains registered for no less than the number of semester or quarter hours of instruction per academic term specified by the Commissioner in the notice for the validity period of such employment authorization." [See 9 FAM 41.61 N10.1(c).]

#### **9 FAM 41.61 N9.1-2 Institution of Higher Learning**

*(TL:VISA-206; 05-22-2000)*

Under INS regulations (8 CFR 214.2(f)(6)(ii), "a college or university is an institution of higher learning which awards recognized associate, bachelor's, master's, doctorate, or professional degrees." The INS holds that schools which devote themselves exclusively or primarily to vocational, business, or language instruction are not included in the category of colleges or universities but are classifiable as M-1 schools.

## **9 FAM 41.61 N9.1-3 Reduced Course Load**

*(TL:VISA-206; 05-22-2000)*

The designated school official (DSO) may advise an F-1 student to engage in less than a full course of study due to initial difficulties with the English language or reading requirements, unfamiliarity with U.S. teaching methods, or improper course level placement. An F-1 student authorized to reduce course load by the DSO in accordance with the provisions of this paragraph is considered to be maintaining status. On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study.

## **9 FAM 41.61 N9.2 M-1 Nonacademic Student**

*(TL:VISA-206; 05-22-2000)*

INS regulations (8 CFR 214.2(m)(9)) specify that “Successful completion of the course of study must lead to the attainment of a specific educational or vocational objective. A ‘full course of study’ as required by section 101(a)(15)(M)(i) of the Act means—

(1) Study at a community college or junior college, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter-hour systems, where all students enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or considered full-time for other administrative purposes, or its equivalent (as determined by the district director) except when the student needs a lesser course load to complete the course of study during the current term;

(2) Study at a postsecondary vocational or business school, other than in a language training program except as provided in Sec. 214.3(a)(2)(iv), which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning which are either:

(a) A school (or school system) owned and operated as a public educational institution by the United States or a State or political subdivision thereof; or

(b) A school accredited by a nationally recognized accrediting body; and which has been certified by a designated school official to consist of at least twelve hours of instruction a week, or its equivalent as determined by the district director;

(3) Study in a vocational or other nonacademic curriculum, other than in a language training program except as provided in Sec. 214.3(a)(2)(iv), certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or at least twenty-two clock hours a week if the dominant part of the course of study consists of shop or laboratory work; or

(4) Study in a vocational or other nonacademic high school curriculum, certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation.

## **9 FAM 41.61 N10 Period of Stay**

### **9 FAM 41.61 N10.1 For F-1 Applicants**

*(TL:VISA-206; 05-22-2000)*

a. An alien entering as an F-1 student or granted a change to that classification is admitted or given an extension of stay for the duration of status. Duration of status means the time during which the student is pursuing a full course of study and any additional periods of authorized practical training, plus 60 days following completion of the course or practical training within which to depart. Since November 30, 1996, however, the duration of status of an F-1 student in a publicly funded secondary school cannot exceed an aggregate of 12 months schooling.

b. An academic student is considered to be in status during the summer between terms, if eligible and intending to register for the next term. Moreover, a student compelled by illness or other medical condition to interrupt or reduce studies is considered to be in status until his or her recovery. The student is expected to resume a full course of study at that time.

c. During the Asian economic crisis, the INS amended its regulations to permit the Commissioner to waive the usual limitations, including hours of coursework, on employment for students faced by unexpected severe economic circumstances. These might include such elements ranging from substantial fluctuations in exchange rates to loss of on-campus employment or other financial aid through no fault of the student, among others. Students granted such waivers are deemed to be in status until the economic emergency is over and the necessity for such reduced studies has passed.

## **9 FAM 41.61 N10.2 For M-1 Applicants**

*(TL:VISA-206; 05-22-2000)*

a. The period of stay for an M-1 student, whether from admission or through a change of nonimmigrant classification, is the time necessary to complete the course of study indicated on Form I-20 M-N plus 30 days within which to depart, or 1 year, whichever is less.

b. Extension of stay—(i) Eligibility. An M - 1 student may be granted an extension of stay if it is established that the student:

(1) Is a bona fide nonimmigrant currently maintaining student status; and

(2) Is able to, and in good faith intends to, continue to maintain that status for the period for which the extension is granted.

## **9 FAM 41.61 N11 Spouse and Child of F-1 or M-1 Student**

### **9 FAM 41.61 N11.1 Findings under INA 214(b) Applied to Spouse and Child of F-1 or M-1 Student**

*(TL:VISA-206; 05-22-2000)*

Before issuing an F-2 or M-2 visa to a spouse or child of a principal F-1 or M-1 alien, the consular officer must be satisfied that the applicant can be expected to depart from the United States upon the termination of the student status of the principal alien. [See 9 FAM 41.61 N4.] Consular officers should keep in mind the concept that coming to a different conclusion about family members entitled to a derivative nonimmigrant classification and the principal should be rare. When justified, it should be based on specific, identifiable differences in the circumstances relating to the principal and the family member(s). [See 9 FAM 41.11 N4.3.]

### **9 FAM 41.61 N11.2 Form I-20 not Required for Accompanying Spouse and Child of F-1 or M-1 Student**

*(TL:VISA-206; 05-22-2000)*

No separate form is required for an accompanying F-2 or M-2 spouse or child of a principal F-1 or M-1 alien. If, however, the spouse and/or minor children are following to join the student, they must present a properly endorsed Form I-20 ID, as evidence that the student is enrolled or will be enrolled within 60 days in a full course of study or is in approved practical training. If there has been a change in the student's status since issuance of the form, the applicant must present a completely new Form I-20 ID. The F-2 or M-2 must present this evidence to both the consular officer and the

immigration officer at the port of entry. Dependents of students enrolled at CIPRIS participating schools will automatically receive individual I-20Ps whether they are accompanying or following to join.

### **9 FAM 41.61 N11.3 Classification of Child Who Will Attend School in the United States**

*(TL:VISA-6; 11-23-1987)*

A child qualified for an F-2, M-2, or any other derivative nonimmigrant classification is not required to qualify under INA 101(a)(15)(F)(i) as a nonimmigrant student even though the child will attend school while accompanying the principal alien. [See 9 FAM 41.11 N5.2.] Moreover, such a child could not qualify for F-1 status for attendance at a public primary school and, if in F-1 status, would be limited to 12 months training at a public high school.

### **9 FAM N12 Employment of F-1 and M-1 Student, Spouse and Children**

#### **9 FAM 41.61 N12.1 On-Campus Employment for F-1 Student**

*(TL:VISA-206; 05-22-2000)*

An F-1 student may accept on-campus employment in an enterprise operated by or on behalf of the school if a U.S. resident will not be displaced as a result. Locations suitable for on-campus employment may be physically separate but must be educationally affiliated with the established curriculum and the employment must be an integral part of the student's educational program. The employment may not exceed 20 hours a week while school is in session and the student must be enrolled on a full-time basis. A student authorized to work on the above basis may work full-time when school is not in session, including during the student's vacation, if the student is eligible and intends to register for the next term or session. The student may not engage in on-campus employment after completion of the course of study, except in cases where the employment is deemed to be practical training as set forth in 9 FAM 41.61 N12.4.

#### **9 FAM 41.61 N12.2 Off-Campus Employment for F-1 Student**

*(TL:VISA-206; 05-22-2000)*

a. An F-1 student may not accept off-campus employment at any time during the first academic year of study. (The "first academic year of study" means the first nine (9) months in student status.) A student in a program longer than one (1) academic year must seek authorization from the designated school official (DSO) for off-campus employment of not more than 20 hours a week. Such employment authorization is

automatically terminated if the student fails to maintain status. The designated school official must certify that:

- (1) The student has been in F-1 status for one full academic year;
- (2) The student is in good standing and carrying a full course of study;
- (3) The student has established that acceptance of employment will not interfere with the full course of study; and
- (4) The prospective employer has submitted a labor and wage attestation or the student has established a severe economic necessity for employment due to unforeseen circumstances beyond the student's control.

b. If a student who has been granted off-campus employment authorization temporarily leaves the country during the period of time when employment is authorized, such employment can be resumed upon return. The student must, however, be returning to the same school.

### **9 FAM 41.61 N12.3 Employment of F-2 Spouse and Children of F-1 Student**

*(TL:VISA-6; 11-23-1987)*

The F-2 spouse and children of an F-1 student may not accept employment.

### **9 FAM 41.61 N12.4 Practical Training**

*(TL:VISA-206; 05-22-2000)*

Students are eligible for practical training programs only after they have completed nine consecutive months in an approved college-level institution or are graduate students who need to participate immediately in curricular practical training.

#### **9 FAM 41.61 N12.4-1 Employment as Part of Curricular or Alternate Work/Study Practical Training for F-1 Student**

*(TL:VISA-206; 05-22-2000)*

A student enrolled in a college or other academic institution having alternate work/study courses as part of the curriculum within the student's program of study may participate in and be compensated for such practical training when so authorized by the designated school official (DSO). Students may not begin such training before endorsement of the their student I-20 ID by the DSO with such endorsement. Periods of actual off-campus employment in a work/study program are considered practical training and are deducted from the total practical training time for which the student is eligible. Thus, students who have engaged in a full year's

practical training, will not receive authorization to engage in practical training after completion of the course of study. Restated, such authorization may be granted for a maximum aggregate of 12 months. However, for graduates of colleges, universities, and seminaries, the maximum aggregate of such training may not exceed the duration of the course of study when such study is less than 12 months.

#### **9 FAM 41.61 N12.4-2 Optional Practical Training**

*(TL:VISA-206; 05-22-2000)*

An F-1 student may otherwise apply for off-campus practical training in a job related to his or her major area of study, during vacations (full time), or for not to exceed 20 hours a week during the school year, after completion of all course requirements for graduation (not including thesis or equivalent), or after completion of all requirements. Such training must be completed within 14 months. In addition to approval by the INS, the student must obtain an Employment Authorization Document (EAD). If the student interrupts the employment for a brief trip abroad, both the unexpired EAD and the endorsed Form I-20 ID will be required for re-entry to complete the training.

#### **9 FAM 41.61 N12.4-3 Effect of a Strike at the Place of Employment**

*(TL:VISA-206; 05-22-2000)*

Any authorization for employment for purposes of practical training is suspended in the event of a strike at the place of employment.

#### **9 FAM 41.61 N12.5 Employment of M-1 Students or Their Spouses and Children**

*(TL:VISA-6; 11-23-1987)*

Except for temporary employment for practical training as set forth in 9 FAM 41.61 N12.6, an M-1 student may not accept employment. The M-2 spouse and children of an M-1 student may not accept employment.

#### **9 FAM 41.61 N12.6 Practical Training for M-1 Student**

*(TL:VISA-6; 11-23-1987)*

An M-1 student who desires temporary employment for practical training must apply on Form I-538. The student submits the application to the INS office having jurisdiction over the school the student was last authorized to attend. If approval is granted, INS will endorse the student's Form I-20 ID with the dates the authorization for practical training/employment begins and ends.

## **9 FAM 41.61 N12.7 Temporary Absence of F-1 or M-1 Student Granted Practical Training**

*(TL:VISA-6; 11-23-1987)*

An F-1 or M-1 student authorized to accept employment for practical training, who leaves the country temporarily, may be readmitted for the remainder of the authorized period. The student must be returning solely to perform the authorized training; conversely, the student may not be readmitted to begin training which was not authorized prior to departure. Both a valid F-1 or M-1 visa and the I-20 ID are required to reenter the United States for practical training purposes.

## **9 FAM 41.61 N13 Visa Annotations**

### **9 FAM 41.61 N13.1 Name of School**

*(TL:VISA-206; 05-22-2000)*

a. An F-1 or M-1 visa must be annotated to show the name of the institution which the alien will initially attend. The consular officer must inform an applicant who has been accepted by more than one institution that the visa application will be considered only on the basis of the Form I-20 issued by the school which the applicant will attend. The consular officer must also warn the applicant that the immigration inspector at the port of entry can refuse admission if given a Form I-20 from a school other than the one named on the visa, or if the student indicates an intention to attend a different institution.

b. This procedure does not apply to any subsequent F-1 visa issued to return to and complete the student's course of study whether at the same or a different school.

### **9 FAM 41.61 N13.2 Entry of Student Prior to Enrollment**

*(TL:VISA-206; 05-22-2000)*

a. Posts must not issue a student visa to an applicant seeking to enter more than 90 days prior to the designated registration date. This will prevent abuses by "students" entering well in advance of enrollment and subsequently not commencing scheduled courses.

b. A student who desires an earlier entry must qualify for, and obtain, a visitor visa. In such a case, a notation must be made below the visa that the applicant is a prospective student. If the applicant presents a fully completed and signed Form I-20 and the required evidence of financial resources, the following notation must be made in the right-hand margin of page 1 of the Form I-20: "B-2 VISA ISSUED ON (DATE)--PROSPECTIVE STUDENT (consular stamp)."

c. At the time of issuance of the B-2 prospective student visa, the visa issuing officer must carefully explain to the applicant that, before beginning any studies, he or she must obtain a change of classification to that of student. The alien must file Form I-506, Application for Change of Nonimmigrant Status, with the requisite fee (currently \$70.00), for this purpose. The student must also submit the Form I-20 and the required financial evidence to the INS office at which the application is made.

### **9 FAM 41.61 N13.3 Entry When School not Selected**

*(TL:VISA 206; 05-22-2000)*

a. A prospective student applicant who has neither been issued a Form I-20 nor made a final selection of a school may wish to enter for the primary purpose of selecting a school. If the applicant qualifies for a visitor visa, and would appear to qualify for a student visa, a B-2 visa may be issued with a notation at the bottom reading "PROSPECTIVE STUDENT, SCHOOL NOT SELECTED."

b. The consular officer must inform the prospective student of:

(1) The conditions relating to student status;

(2) The financial evidence required; and

(3) The need to apply to INS for a change of status if a school is selected.

[See 9 FAM 41.113 PN6.2 for a discussion of notations for prospective student visas.]

### **9 FAM N13.4 No I-20, but Alien Has Documentary Evidence of Acceptance**

*(TL:VISA-206; 05-22-2000)*

When an alien has documentary evidence that admission to a particular school has been granted, and when circumstances warrant the alien's departure before the Form I-20 has been received, the consular officer may issue a B-2 visa for travel purposes with a notation below the visa reading: "PROSPECTIVE STUDENT--SUPPORTING DOCUMENTS TO BE PRESENTED AT THE PORT OF ENTRY."

This procedure shall be followed only if the alien possesses credible documentary evidence of admission on the institution's letterhead stationery, signed by the designated school official. The consular officer must inform an alien issued a B-2 visa in these circumstances that, upon arrival at the port of entry, he or she must present the same documentary evidence to the immigration officer. The alien must also be advised that, once admitted, it will be necessary to:

- (1) Obtain a Form I-20 from the institution granting admission; and
- (2) Present to the INS office having jurisdiction:
  - (a) The completed Form I-20;
  - (b) The required evidence of financial resources; and
  - (c) The filing fee for a change of classification.

### **9 FAM 41.61 N13.5 No I-20, and no Documentary Evidence**

*(TL:VISA-206; 05-22-2000)*

There will be occasions when circumstances urgently require travel to the United States by an alien intending to enroll for academic, language or vocational study at a particular accepting school, but the alien has no credible documentary evidence of acceptance by the school. In such urgent cases, the applicant should be asked to obtain an I-20 through the international express mail (courier) services. [See 9 FAM 41.61 Exhibit I for a listing of Express Mail Carriers.] Where express mail services are not available, the Department will determine on a case-by-case basis what assistance may be provided, including telegraphic notification. Given the large number of posts covered by express mail services and the generally timely mailing of forms by schools, it is anticipated that Departmental assistance will be needed only infrequently. [See 9 FAM 41.61 N13.3 for cases involving applicants who have not received Form I-20 but do have credible evidence of acceptance by the educational institution concerned.]

### **9 FAM 41.61 N13.6 Entering for Admission Interview or Entrance Examination**

*(TL:VISA-206; 05-22-2000)*

a. When a prospective student presents credible evidence of the need to enter for an admission interview or to take an entrance examination to the consular officer, a B-2 prospective student visa may be issued with an annotation at the bottom of the visa reading: "PROSPECTIVE STUDENT, ADMISSION INTERVIEW" or "PROSPECTIVE STUDENT, SCHOOL ENTRANCE EXAMINATION."

b. The only credible evidence acceptable under this procedure is a letter from the approved school which:

- (1) Gives the date on which INS granted approval for the school to issue Form I-20A-B and the INS file number assigned to the school;

(2) States that, without exception, all applicants for admission must take an entrance examination or appear for an interview for admission to the school or department of the school considering the alien's admission and the alien needs to obtain a visa specifically for one or the other of these two purposes; and

(3) States that the student has met all other requirements for admission.

c. When the above procedure is used, the consular officer must inform the alien of:

(1) The need to present to the immigration inspector at the port of entry the same letter from the school showing that the student's attendance is required for the admission interview or examination;

(2) The need to apply to INS for a change of classification if a Form I-20A-B is issued after the interview or examination; and

(3) The financial requirements for attaining student status.

## **9 FAM 41.61 N14 Temporary Absence**

### **9 FAM 41.61 N14.1 Aliens Who Apply While Abroad for an F-1 or M-1 Visa**

*(TL:VISA-6; 11-23-1987)*

Except as provided below, an alien making a short trip abroad during an authorized period of study, who needs to obtain a new visa during such absence, need only present Form I-20 ID, properly executed and endorsed. If otherwise qualified, the applicant may be issued the appropriate visa. The foregoing is applicable only if there has been no substantive change in item(s) 3, 4, 6, and/or 7 of the student's most recent Form I-20A-B or Form I-20M-N.

### **9 FAM 41.61 N14.2 Temporary Absence of Aliens Applying Abroad for Attendance at School Other than Listed on the Visa**

*(TL:VISA-206; 05-22-2000)*

A student temporarily abroad who intends to return to study at a U.S. institution other than the one for which the original visa was issued may seek admission with the original visa, if still valid, and the Form I-20 from the new school. If the student wishes to apply for a new visa, however, he or she must present:

(1) A completed nonimmigrant visa application;

(2) A properly executed and endorsed Form I-20 ID from the new institution; and

(3) A copy of the current Form I-20 ID issued within the last six months by the receiving school. An INS endorsement is not required, but the form must bear the signature of an official of the new school, college or university.

Although not necessary to gain admission, consular officers are encouraged to annotate the valid visa with the name of the new school or issue a new F-1 visa, cancelling the original visa without prejudice.

## **9 FAM 41.61 N15 Special Cases**

### **9 FAM 41.61 N15.1 Students Destined to Schools Which Are Avocational or Recreational in Character**

*(TL:VISA-6; 11-23-1987)*

INS cannot approve schools which are avocational or recreational in character for issuance of Certificates of Eligibility. Students coming to study in such schools may be classified B-2, if the purpose of attendance is recreational or avocational. When the nature of a school's program makes determining its character difficult, officers shall consult the appropriate INS office in determining the alien's proper classification. [See 9 FAM 41.31 N10.6.]

### **9 FAM 41.61 N15.2 Elementary School Students**

*(TL:VISA-206; 05-22-2000)*

a. Only children qualified for derivative nonimmigrant classification through a principal alien parent [see 9 FAM 41.11 N5.2], may attend a publicly funded elementary school. [See 9 FAM 41.61 N1.] No F-1 visa may be issued on the basis of a Form I-20 issued by a public elementary school or school system. However, any student of school age who is otherwise qualified may receive an F-1 visa under INA 101(a)(15)(F)(i) to attend a private elementary school.

b. Young applicants for student visas are frequently members of large families of low income. A relative, friend, or institution in the United States may offer to accept one or more of the children and provide an indeterminate number of years of schooling. Elementary school applicants are, of course, not qualified to give assurances that they will depart upon completion of the projected course of study. The consular officer must, therefore, be careful to ascertain that the family situation is such that entry for purposes of immigration is not being sought for the applicant in the guise of a student, but that, upon completion of the course of study, the applicant can be expected to return abroad.

## **9 FAM 41.61 N15.3 Candidates for Religious Orders**

*(TL:VISA-6; 11-23-1987)*

Aliens desiring to enter a convent or other institution for religious training of a temporary nature are classifiable as F-1 students under INA 101(a)(15)(F), if the institution has been approved as a place of study and the applicant will return abroad after concluding the course of study or training.

## **9 FAM 41.61 N15.4 Student Destined to U.S. Military Training Facility**

*(TL:VISA-6; 11-23-1987)*

Civilian aliens accepted by any of the U.S. Military Academies shall be classified as F-1 students and required to present Form I-20A-B. Alien military personnel coming to the United States for education or training at any armed forces training facility are to be classified as foreign government officials and issued A-2 visas.

## **9 FAM 41.61 N15.5 Alien Graduate of Foreign Medical School**

*(TL:VISA-6; 11-23-1987)*

a. Foreign medical graduates seeking to enter temporarily in connection with their profession are not eligible for F-1 visas. Such applicants must apply and qualify for immigrant visas or for exchange visitor (J) or temporary worker (H) visas. [See 9 FAM 41.62 N9 and 9 FAM 41.53 N4.]

b. At least one school has been approved to issue Forms I-20A-B to foreign medical graduates for a review-type continuing education course of study in preparation for taking tests in the field of medicine. Foreign medical graduates seeking to enter the United States to take such a review-type course of study who present a Form I-20A-B from an approved school are classifiable as F-1 students.

## **9 FAM 41.61 N15.6 Alien Entering the United States for Nursing Training**

*(TL:VISA-206; 05-22-2000)*

INS has approved a number of hospital-affiliated nurses' training schools for attendance by nonimmigrant students. In cases where a school has been thus approved, the alien's application may be given consideration under INA 101(a)(15)(F).

## **9 FAM 41.61 N15.7 B-2 Visa for Visitor Who Will Engage in a Short Course of Study**

*(TL:VISA-206; 05-22-2000)*

Aliens coming primarily for tourism but engaging also in a short course of study are properly classified for B-2 visas. The consular officer should insert the following notation below the visa: "STUDY INCIDENTAL TO VISIT; I-20 NOT REQUIRED." [See 9 FAM 41.31 N9b(6).]

## **9 FAM 41.61 N16 Maintenance of Status and Departure Bond**

*(TL:VISA-268; 04-26-2001)*

See 9 FAM 41.11 N8 and 9 FAM 41.113 PN11.3.

## **9 FAM 41.61 N17 Automatic Extension of Validity of Visa**

*(TL:VISA-206; 05-22-2000)*

See 9 FAM 41.112(d).